

Bill No. SB 12-A

Amendment No. ____

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Meek moved the following amendment:

Senate Amendment (with title amendment)

On page 35, between lines 26 and 27,

insert:

Section 21. Section 921.141, Florida Statutes, is amended to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.--

(1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to

Bill No. SB 12-A

Amendment No. ____

1 determine the issue of the imposition of the penalty. If the
2 trial jury has been waived, or if the defendant pleaded
3 guilty, the sentencing proceeding shall be conducted before a
4 jury impaneled for that purpose, unless waived by the
5 defendant. In the proceeding, evidence may be presented as to
6 any matter that the court deems relevant to the nature of the
7 crime and the character of the defendant and shall include
8 matters relating to any of the aggravating or mitigating
9 circumstances enumerated in subsections ~~(6)(5)~~ and ~~(7)(6)~~.
10 Any such evidence which the court deems to have probative
11 value may be received, regardless of its admissibility under
12 the exclusionary rules of evidence, provided the defendant is
13 accorded a fair opportunity to rebut any hearsay statements.
14 However, this subsection shall not be construed to authorize
15 the introduction of any evidence secured in violation of the
16 Constitution of the United States or the Constitution of the
17 State of Florida. The state and the defendant or the
18 defendant's counsel shall be permitted to present argument for
19 or against sentence of death.

20 (2) ADVISORY SENTENCE BY THE JURY.--After hearing all
21 the evidence, the jury shall deliberate and render an advisory
22 sentence to the court, based upon the following matters:

23 (a) Whether sufficient aggravating circumstances exist
24 as enumerated in subsection ~~(6)(5)~~;

25 (b) Whether sufficient mitigating circumstances exist
26 which outweigh the aggravating circumstances found to exist;
27 and

28 (c) Based on these considerations, whether the
29 defendant should be sentenced to life imprisonment or death.

30 (3) JURY RECOMMENDATION.--A jury recommendation of
31 death must be by a vote of at least 10 to 2. If the jury vote

Bill No. SB 12-A

Amendment No. ____

1 for death is less than 10, a life recommendation is entered.

2 (4)~~(3)~~ FINDINGS IN SUPPORT OF SENTENCE OF

3 DEATH.--Notwithstanding the recommendation of a majority of
4 the jury, the court, after weighing the aggravating and
5 mitigating circumstances, shall enter a sentence of life
6 imprisonment or death, but if the court imposes a sentence of
7 death, it shall set forth in writing its findings upon which
8 the sentence of death is based as to the facts:

9 (a) That sufficient aggravating circumstances exist as
10 enumerated in subsection(6)~~(5)~~, and

11 (b) That there are insufficient mitigating
12 circumstances to outweigh the aggravating circumstances.

13

14 In each case in which the court imposes the death sentence,
15 the determination of the court shall be supported by specific
16 written findings of fact based upon the circumstances in
17 subsections(6)~~(5)~~and(7)~~(6)~~and upon the records of the
18 trial and the sentencing proceedings. If the court does not
19 make the findings requiring the death sentence within 30 days
20 after the rendition of the judgment and sentence, the court
21 shall impose sentence of life imprisonment in accordance with
22 s. 775.082.

23 (5)~~(4)~~ REVIEW OF JUDGMENT AND SENTENCE.--The judgment
24 of conviction and sentence of death shall be subject to
25 automatic review by the Supreme Court of Florida and
26 disposition rendered within 2 years after the filing of a
27 notice of appeal. Such review by the Supreme Court shall have
28 priority over all other cases and shall be heard in accordance
29 with rules promulgated by the Supreme Court.

30 (6)~~(5)~~ AGGRAVATING CIRCUMSTANCES.--Aggravating
31 circumstances shall be limited to the following:

Bill No. SB 12-A

Amendment No. ____

1 (a) The capital felony was committed by a person
2 previously convicted of a felony and under sentence of
3 imprisonment or placed on community control or on felony
4 probation.

5 (b) The defendant was previously convicted of another
6 capital felony or of a felony involving the use or threat of
7 violence to the person.

8 (c) The defendant knowingly created a great risk of
9 death to many persons.

10 (d) The capital felony was committed while the
11 defendant was engaged, or was an accomplice, in the commission
12 of, or an attempt to commit, or flight after committing or
13 attempting to commit, any: robbery; sexual battery; aggravated
14 child abuse; abuse of an elderly person or disabled adult
15 resulting in great bodily harm, permanent disability, or
16 permanent disfigurement; arson; burglary; kidnapping; aircraft
17 piracy; or unlawful throwing, placing, or discharging of a
18 destructive device or bomb.

19 (e) The capital felony was committed for the purpose
20 of avoiding or preventing a lawful arrest or effecting an
21 escape from custody.

22 (f) The capital felony was committed for pecuniary
23 gain.

24 (g) The capital felony was committed to disrupt or
25 hinder the lawful exercise of any governmental function or the
26 enforcement of laws.

27 (h) The capital felony was especially heinous,
28 atrocious, or cruel.

29 (i) The capital felony was a homicide and was
30 committed in a cold, calculated, and premeditated manner
31 without any pretense of moral or legal justification.

Bill No. SB 12-A

Amendment No. ____

1 (j) The victim of the capital felony was a law
2 enforcement officer engaged in the performance of his or her
3 official duties.

4 (k) The victim of the capital felony was an elected or
5 appointed public official engaged in the performance of his or
6 her official duties if the motive for the capital felony was
7 related, in whole or in part, to the victim's official
8 capacity.

9 (l) The victim of the capital felony was a person less
10 than 12 years of age.

11 (m) The victim of the capital felony was particularly
12 vulnerable due to advanced age or disability, or because the
13 defendant stood in a position of familial or custodial
14 authority over the victim.

15 (n) The capital felony was committed by a criminal
16 street gang member, as defined in s. 874.03.

17 (7)~~(6)~~ MITIGATING CIRCUMSTANCES.--Mitigating
18 circumstances shall be the following:

19 (a) The defendant has no significant history of prior
20 criminal activity.

21 (b) The capital felony was committed while the
22 defendant was under the influence of extreme mental or
23 emotional disturbance.

24 (c) The victim was a participant in the defendant's
25 conduct or consented to the act.

26 (d) The defendant was an accomplice in the capital
27 felony committed by another person and his or her
28 participation was relatively minor.

29 (e) The defendant acted under extreme duress or under
30 the substantial domination of another person.

31 (f) The capacity of the defendant to appreciate the

Bill No. SB 12-A

Amendment No. ____

1 criminality of his or her conduct or to conform his or her
2 conduct to the requirements of law was substantially impaired.

3 (g) The age of the defendant at the time of the crime.

4 (h) The existence of any other factors in the
5 defendant's background that would mitigate against imposition
6 of the death penalty.

7 (8)~~(7)~~ VICTIM IMPACT EVIDENCE.--Once the prosecution
8 has provided evidence of the existence of one or more
9 aggravating circumstances as described in subsection(6)~~(5)~~,
10 the prosecution may introduce, and subsequently argue, victim
11 impact evidence. Such evidence shall be designed to
12 demonstrate the victim's uniqueness as an individual human
13 being and the resultant loss to the community's members by the
14 victim's death. Characterizations and opinions about the
15 crime, the defendant, and the appropriate sentence shall not
16 be permitted as a part of victim impact evidence.

17 (9)~~(8)~~ APPLICABILITY.--This section does not apply to
18 a person convicted or adjudicated guilty of a capital drug
19 trafficking felony under s. 893.135.

20
21 (Redesignate subsequent sections.)

22
23
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 On page 3, line 6, after the semicolon,

27
28 insert:

29 amending s. 921.141, F.S.; requiring that a
30 jury recommendation of death be by a specified
31 vote of the jury; providing for a life sentence

Bill No. SB 12-A

Amendment No. ____

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if the jury vote is less than a specified vote;